

FILED

OCT 16 4 01 PM '83

BY *Flippelli*

RICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources Division
ROBERT R. HOMIAK
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 633-5485

STEPHEN M. McNAMEE
United States Attorney
District of Arizona
CINDY K. JORGENSEN
Assistant U.S. Attorney
Acapulco Building, Suite 310
110 S. Church Street
Tucson, Arizona 85701
(602) 629-6511

GAIL B. COOPER
Acting Regional Counsel
KATHLEEN H. JOHNSON
Assistant Regional Counsel
U.S. Environmental Protection Agency/Region IX
215 Fremont Street
San Francisco, California 94105
(415) 974-7451

Attorneys for Plaintiff United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BURR-BROWN CORPORATION,

Defendant.

CIV 89 594 TUC

CIV. NO. _____

COMPLAINT

RMAD

①

The United States of America ("United States"), at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges that:

STATEMENT OF THE CASE

1. This is a civil action for injunctive relief and recovery of costs brought pursuant to Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606(a) and 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). The United States seeks injunctive relief to remedy an imminent and substantial endangerment to human health and the environment arising out of the release or threatened release of hazardous substances at the Tucson International Airport Area Superfund Site (the "Site") located in Tucson, Pima County, Arizona. The United States also seeks to recover costs incurred for response, remedial, and investigative activities undertaken at the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the Defendant pursuant to Sections 106(a), and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANT

1 4. The Defendant in this action is the Burr-Brown
2 Corporation ("Burr-Brown"), a Delaware corporation. Burr-Brown
3 owns and operates a facility, as that term is defined in
4 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), located in
5 Tucson, Arizona. Defendant is a person within the meaning of
6 Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
7

THE SITE

8 5. The Tucson International Airport Area Site ("the
9 Site") is located in Pima County, Arizona. The Site includes
10 industrial, commercial, residential and undeveloped areas. The
11 approximate site boundaries are the Santa Cruz River on the
12 West, Ajo Way on the North, Alvernon Way on the East, and the
13 Hughes Access Road on the South.

14 6. The Burr-Brown facility is located within the
15 boundaries of the Tucson International Airport Area Site.

16 7. On September 8, 1983, the Site was placed on the
17 National Priorities List, 40 C.F.R. Part 300, Appendix B, which
18 is a national list of hazardous waste sites posing the greatest
19 threat to health, welfare and the environment. The National
20 Priorities List is established pursuant to Section 105(a) of
21 CERCLA, 42 U.S.C. § 9605(a).

22 8. Pursuant to Section 104 of CERCLA, 42 U.S.C.
23 § 9604, in 1985, the Arizona Department of Health Services,
24 under a cooperative agreement with the U.S. EPA, completed a
25 Remedial Investigation ("RI") at the Site, to investigate and
26 determine the nature and extent of contamination at the Site.

9. The RI demonstrated that there were three distinct areas of groundwater contamination within the boundaries of the Tucson International Airport Area Site. The contaminants detected included a wide variety of hazardous substances, including 1,1,1-trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, chloroform, benzene, and xylene.

10. Pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, the Arizona Department of Water Resources, under a cooperative agreement with the U.S. EPA, conducted a Feasibility Study ("FS") to assess several options to remediate groundwater contamination at the Site.

11. Based on information collected during the RI/FS, the U.S. EPA selected a final groundwater remedy in a Record of Decision that was issued on August 22, 1988.

12. There were and are releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and the threat of continuing releases, of hazardous substances into the environment at the Site.

13. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been treated or disposed of at the Site.

FIRST CLAIM FOR RELIEF

1 15. Paragraphs 1-14 are realleged and incorporated
2 herein by reference.

3 16. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a),
4 provides in pertinent part:

5 In addition to any other action taken by a State or local
6 government, when the President determines that there may be
7 an imminent and substantial endangerment to the public
8 health or welfare or the environment because of an actual or
9 threatened release of a hazardous substance from a facility,
10 he may require the Attorney General of the United States to
secure such relief as may be necessary to abate such danger
or threat, and the district court of the United States in
the district in which the threat occurs shall have
jurisdiction to grant such relief as the public interest and
the equities of the case may require.

11 17. The President's functions under Section 106(a) of
12 CERCLA, 42 U.S.C. § 9606(a), have been delegated to the
13 Administrator of the Environmental Protection Agency, and
14 further delegated to the EPA Regional Administrator.

15 18. The Regional Administrator of EPA Region IX has
16 determined that there is or may be an imminent and substantial
17 endangerment to the public health or welfare or the environment
18 because of actual or threatened releases of hazardous
19 substances from the Site.

20 19. Defendant is liable for the injunctive relief to
21 which the United States is entitled at the Site under Section
22 106(a) of CERCLA, 42 U.S.C. § 9606(a).
23
24
25
26

SECOND CLAIM FOR RELIEF

20. Paragraphs 1-14 are realleged and incorporated herein by reference.

21. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(1) the owner and operator of a vessel . . . or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . .

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . .

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan . . .

22. The United States has incurred and will continue to incur response costs not inconsistent with the National Contingency Plan, including the costs for removal and remedial actions as defined in Section 101(23), (24) and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25), and costs authorized by Section 104 of CERCLA, 42, U.S.C. § 9604, to respond to the release or threatened release of hazardous substances at the site.

23. Burr-Brown is liable to the United States for all response costs, including the costs of removal and remedial actions, incurred in the past or to be incurred in the future at or resulting from the Burr-Brown facility, both because it

is the present owner and operator of the facility and because
it owned and operated the facility at the time that hazardous
substances were disposed of at the facility.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff, the United States of America, prays
that the Court:

1. Order Defendant to take all actions necessary to
remedy the conditions at the Site that may present an imminent
and substantial endangerment to the public health or welfare or
the environment;

2. Award the United States a judgment against the
Defendant, for all costs incurred by the United States in
connection with the Burr-Brown facility; and

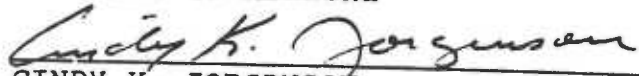
3. Award the United States a declaratory judgment
that Defendant is liable for future costs incurred by the
United States in connection with the Burr-Brown facility.

Respectfully submitted,


RICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice

STEPHEN M. MCNAMEE
United States Attorney
District of Arizona

By:


CINDY K. JORGENSEN
Assistant United States Attorney
Office of the United States Attorney
District of Arizona

Robert R. Homiak

ROBERT R. HOMIAK
Senior Attorney
Environmental Enforcement Section
Land and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20450
(202) 633-5485

OF COUNSEL

KATHLEEN M. JOHNSON
JOHN D. ROTHMAN
Assistant Regional Counsels
United States Environmental
Protection Agency
215 Fremont Street
San Francisco, CA

SANDRA L. CONNORS
Attorney
Office of Enforcement and
Compliance Monitoring
United States Environmental
Protection Agency
401 M Street, SW
Washington, D.C. 20460